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OFFICE OF THE SECRETARY

July 25, 1997

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: MCI Telecommunications Corporation Petition for Rulemaking -- Billing and Collection Services Provided By Local Exchange Carriers for Non-Subscribed Interexchange Services, RM 9108

Dear Mr. Caton:

Pursuant to the Commission's June 25, 1997 Public Notice in the above-referenced matter, enclosed for filing are an original and four (4) copies of the Comments of Hold Billing Services, Ltd.

Please date-stamp the enclosed extra copy of these Comments and return it to the undersigned via our messenger. If you should have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

Michael R. Romano

C. Joël Van Over
Michael R. Romano

Counsel for Hold Billing Services, Ltd.

Enclosures

cc: Rick Box
International Transcription Service
Darius B. Withers, Common Carrier Bureau (w/diskette)

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DOCKET FILE COPY ORIGINAL ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
MCI Telecommunications Corporation	)	RM 9108
	)	
Billing and Collection Services Provided	)	
By Local Exchange Carriers for Non-Subscribed	)	
Interexchange Services	)	
	)	

COMMENTS OF
HOLD BILLING SERVICES, LTD.

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Counsel for Hold Billing Services, Ltd.

Dated: July 25, 1997

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EXECUTIVE SUMMARY

The Comments of Hold Billing Services, Ltd. may be summarized as follows:

Commission Authority to Address Unfair and Discriminatory Billing and Collection Practices: While the Commission deregulated billing and collection services provided by LECs in 1986, it has not refrained from acting to address discrimination in this area since that time. As new technological and competitive circumstances warrant, the Commission has demonstrated the ability to reevaluate various aspects of billing and collection services. Thus, the Commission should in this context again exercise its authority to respond to new competitive pressures and improper exercises of power by ILECs in the provision of billing and collection services.

Bad Faith Negotiating Strategies and Control Of Billing and Collection Functions are Harming Clearinghouses and IXCs: As ILECs race to enter the long distance market, ILECs are using their bottleneck control of billing name and address and other essential billing and collection information to undermine the ability of potential IXC competitors and the clearinghouses that serve them to bill and collect for non-subscribed calls. Similarly, the ILECs' ability to generate a single bill for the end user give the ILECs leverage over IXCs and clearinghouses with respect to presubscribed calls as well. The significant capital investment associated with developing alternative methods to bill and collect end users forces IXCs and clearinghouses to accept the onerous terms presented by the ILECs.

Necessary Action to Prevent ILECs From Leveraging Control of Billing and Collection Functions to Enter the Long Distance Market: The Commission should respond to this improper exercise of control by first adopting a rule preventing ILECs from discriminating against IXCs and clearinghouses in favor of their own interLATA operations or the interLATA operations of their affiliates. In the longer term, the Commission should eliminate the ILECs' bottleneck control over critical billing and collection data by promoting the creation of an independent informational database through existing industry workshops.

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	)	

COMMENTS OF
HOLD BILLING SERVICES, LTD.

Hold Billing Services, Ltd. ("HBS"), by undersigned counsel, hereby submits its Comments in support of the Petition for Rulemaking ("Petition") filed by MCI Telecommunications Corporation ("MCI") on May 19, 1997 in the above-captioned proceeding.

HBS is a partnership formed in 1994 for the purpose of providing LEC billing and collection ("B&C") services to facilities-based interexchange carriers ("IXCs") and reseller IXCs. Since that time, HBS has entered into B&C contracts with all of the Bell Operating Companies, GTE, Sprint-United, and numerous other independent incumbent telephone companies (collectively, "ILECs"). Because HBS's business focuses on the provision of consolidated B&C services to IXCs, HBS has a strong interest in ensuring that these services are made available to clearinghouses and IXCs on a fair and nondiscriminatory basis. Unfortunately, the ILECs that occupy a key position with respect to B&C functions have recently refused to enter into fair and nondiscriminatory contracts for these services. Instead, the ILECs have used their control over B&C functions and a "take it or leave it" negotiating stance to impose onerous, one-sided contractual provisions that undermine the ability of clearinghouses and IXCs to bill and collect for both non-subscribed and presubscribed

telecommunications services. ILECs cannot be permitted to leverage their control over B&C services in such a manner. Accordingly, HBS joins MCI in urging the Federal Communications Commission ("Commission") to investigate the provision of B&C functions by ILECs and to remedy the unfair, inadequate, and discriminatory terms and conditions that ILECs are attempting to insert in B&C contracts.

I. THE COMMISSION HAS THE ABILITY TO RESPOND TO UNFAIR AND DISCRIMINATORY PRACTICES IN THE PROVISION OF BILLING AND COLLECTION FUNCTIONS BY ILECS.

While the Commission deregulated B&C services provided by local exchange carriers ("LECs") in 1986,[1] this has not stopped the Commission from subsequently addressing discrimination within the context of B&C matters. Indeed, in the same order in which it deregulated B&C services for the purposes of Title II of the Communications Act of 1934, the Commission noted that it retained ancillary jurisdiction under Title I to regulate B&C to IXCs, but simply declined to exercise jurisdiction at that time. *Id.* at ¶¶35, 37.

As new telecommunications services and novel competitive issues have emerged, the Commission has demonstrated the ability to reevaluate various aspects of B&C services. In 1993, for example, the Commission concluded that the provision of billing name and address ("BNA") information by LECs is a communications common service subject to the Commission's Title II jurisdiction.[2] In 1996, the Commission declared that provision of a customer's BNA information

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[1] *Detariffing of Billing and Collection Services*, 102 FCC 2d 1150 (1986).

[2] *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Second Report and Order, 8 FCC Rcd 4478, 4481, at ¶16 (1993).

to its presubscribed carrier is required by its "equal access rules."[3] Notwithstanding the deregulation of B&C services in 1986, the Commission has since effectively exercised its authority to respond to changed conditions and unfair practices in the provision of B&C functions. For the reasons discussed in detail below, the Commission should now take action in response to new competitive pressures and improper exercises of power by ILECs, and respond by extending the nondiscrimination principles it issued in its most recent rulemakings to all B&C services.

II. ILECS ARE USING BAD FAITH NEGOTIATING TACTICS AND CONTROL OVER BILLING AND COLLECTION FUNCTIONS TO LIMIT THE ABILITY OF CLEARINGHOUSES AND OTHER CARRIERS TO BILL AND COLLECT FOR SERVICES RENDERED.

With the enactment of the Telecommunications Act of 1996 ("1996 Act"), ILECs are racing to enter the long distance market through their own interLATA operations or through the creation of affiliated carriers. As a result, these ILECs have a new incentive to discriminate against other IXCs who are or soon will be their competitors. By denying IXCs access to vital customer information and by forcing them to accept burdensome terms for B&C services, the ILECs can harm the operations of their IXC competitors without compromising their own operations. As discussed below, it is extremely difficult, if not impossible, for these IXCs to forego the ILECs' services and direct bill customers for services rendered. Thus, ILECs can use their position in the market -- their virtually unfettered control over B&C functions -- to tip the scales in favor of their own IXC operations or those of their affiliates.

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[3] *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Third Order on Reconsideration, 11 FCC Rcd 6835, 6857, at ¶40 (1996).

Clearinghouses, as the entities that provide consolidated B&C services for these potential competitors, also suffer from this ILEC discrimination. Only the ILECs have access to the billing name and address ("BNA") data that is essential for clearinghouses and IXCs to bill and collect for non-subscribed, casual calls. A simple example may help to demonstrate how this bottleneck control adversely affects clearinghouses and IXCs. When a non-subscribed call terminates on an ILEC's network, the clearinghouse is not able to determine whether the recipient of the call is a customer of the ILEC or a competitive local exchange carrier ("CLEC") reselling the ILEC's services. In turn, when the clearinghouse attempts to bill the ILEC for a call to a CLEC customer, only the ILEC possesses the information to determine which CLEC should in fact be billed for the call.[4] The ILECs have recently capitalized upon this bottleneck control over information to adopt a "take it or leave it" negotiating stance, thereby forcing clearinghouses to accept terms that otherwise would be unacceptable.

Although MCI's Petition focuses on this dynamic with respect to non-subscribed services, HBS notes that ILECs also wield considerable negotiating power with respect to presubscribed services. Many IXCs cannot feasibly produce and deliver separate bills for long distance services. Quite simply, it is impractical for many IXCs to draw resources away from their efforts to provide telecommunications services in order to invest in the development of a B&C system. Indeed, some IXCs simply do not possess the resources to make such a significant initial capital expenditure.

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[4] And presently, the ILECs refuse to reveal this information, instead transmitting a message that the call is unbillable with no information regarding the ultimate recipient's local exchange carrier. As a result, IXCs are forced to write off these calls as uncollectible. With the rapid growth of CLEC market share in the local exchange market, such uncollectible calls will only increase in number.

Thus, they are reliant on the ILECs, through the clearinghouse process, for the production and delivery of bills to their customers. Furthermore, it is clear that customers prefer a single bill for local and long distance calls, and it would be problematic for IXCs to be forced to provide a second bill against their customers' clear wishes.[5]

Actions taken by ILECs in recent months in negotiating B&C contracts with clearinghouses and IXCs are making it increasingly difficult for these parties to do business. Because it is impractical and inefficient to develop separate B&C systems, these parties are forced to accept the burdensome terms foisted upon them by the ILECs. Such terms constitute a barrier to entry for smaller IXCs, and the Commission should investigate the imposition of these terms by the ILECs. Specifically, Section 257 of the 1996 Act directs the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services."[6] The Commission should therefore act in the context of the MCI Petition to address the ILECs' attempts to abuse their control of B&C functions to the detriment of smaller IXCs and the clearinghouses that serve them.

HBS is already beginning to experience the ramifications of the anticompetitive negotiating tactics being employed recently by the ILECs. Under the cloak of "consumer protection," ILECs

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[5] At the Commission's Public Forum on Billing, AT&T revealed that a customer preference survey found that 56 percent of the customers that had left AT&T for Southern New England Telephone in Connecticut had done so because of the convenience of a single bill. Similarly, AT&T quoted a 1996 Yankee Group survey finding that 80 percent of telecommunications consumers prefer a single bill. Transcript, Federal Communications Commission Public Forum on Local Exchange Carrier Billing for Other Businesses, at 15, lines 8-17 (June 24, 1997) ("Transcript").

[6] 47 U.S.C. § 257(a) (1996).

are imposing terms on clearinghouses and IXCs that state regulatory commissions have not yet found to be necessary or in the public interest. For example, the Louisiana Public Service Commission adopted regulations earlier this year prohibiting the use of "contest box" programs to solicit new customers.[7] (It should be noted that this order expressly -- and paradoxically -- excludes from this prohibition on promotional material those programs favored by some larger IXCs in which a negotiable check payable to the customer is inserted with the letter of agency.) In compliance with this prohibition, BellSouth has rightfully banned the use of contest boxes by clearinghouses or IXCs in connection with any B&C functions it performs in Louisiana. However, BellSouth has extended this prohibition beyond Louisiana to all of its service territory, refusing to bill and collect from any customers solicited through the use of a contest box program. Thus, BellSouth is preventing HBS and its customers from utilizing a contest box even in those states that allow such programs.

Of course, HBS intends to comply fully with the determination of a state regulatory commission that certain practices are or are not in the public interest. But HBS should not be made to comply with *BellSouth's* determination of what is or is not in the public interest. BellSouth is not a neutral arbiter of the public interest, is not charged by statute with protecting consumers, and it should not force its determination of the public interest upon clearinghouses and IXCs. If administered properly under appropriate standards and with full disclosure of the applicable terms, a contest box program can serve a valuable and legitimate purpose in advertising services to potential customers. BellSouth's role should be to administer the B&C functions in accordance with

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[7] *Regulations to Protect Telephone Consumers from the Switching of their Long Distance Carrier Without Proper Authorization*, Docket U-22219, General Order, at Appendix A, p.5 (La. P.S.C. May 7, 1997). A copy of this General Order is provided with these Comments as Attachment A.

applicable law, and it should not be allowed to abuse its power by policing the marketing techniques of IXCs and clearinghouses above and beyond what is called for by the law.

A recent change in policy by GTE offers another example of how ILECs are improperly exercising control over B&C functions to dictate how clearinghouses and IXCs bill and collect for services rendered. As GTE revealed at the Commission's Public Forum on Billing, it is now mandating that an "excessive complaint surcharge" be included in all of its B&C contracts.[8] GTE has even gone so far as to require modifications of existing contracts to incorporate the surcharge, and where a carrier or clearinghouse refuses to modify the contract as ordered, GTE is "in the process of terminating those contracts." *Id.*, at 124, lines 4-7 Indeed, GTE has gone so far as to include provisions in its B&C contracts that mandate termination of the B&C contract if enough complaints are lodged.

Because of the control that ILECs exercise over B&C functions, clearinghouses and IXCs are eventually compelled to agree to GTE's surcharge and termination provisions, or else they simply will not be able to bill and collect in GTE's service territories. While these terms are ostensibly a consumer protection measure, a closer look reveals several flaws in this disguise. As a preliminary matter, it must be noted that GTE has provided no basis for the amount of its surcharge. It is unclear whether this amount is in any manner related to any damages suffered by GTE, and if so, how GTE established the cost of those damages. It is more likely that these penalties contribute directly to GTE's profit margin with little, if any, relationship to harm suffered by GTE.

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[8] Transcript, at 122, lines 9-12.

Of course, the fundamental question is from what source of authority GTE derives its power to assess this surcharge or enforce the onerous termination provisions at all. This Commission and the state regulatory entities already police consumer complaints and impose substantial penalties on carriers that violate anti-slamming regulations or other marketing, billing, and collection rules. Federal and state regulators are trained to investigate the validity of consumer complaints and they are neutrally positioned to determine what level of punishment should be imposed. GTE, on the other hand, has no incentive to expend resources investigating whether complaints are valid. Most importantly, clearinghouses and IXCs could lose their B&C contracts altogether under GTE's termination provision merely on the basis of unsubstantiated complaints. GTE is not a neutral party, and in fact it stands to gain by imposing arbitrary surcharges on clearinghouses and IXCs without any investigation. While HBS supports regulation of the B&C process in a manner that is fair to both consumers and carriers, the Commission cannot allow ILECs to use their power over the B&C process to arbitrarily police billing and collection practices by clearinghouses and IXCs.

III. THE COMMISSION MUST ACT TO PROTECT THE INTERLATA MARKET AND PREVENT ILECS FROM ABUSING THEIR CONTROL OF BILLING AND COLLECTION FUNCTIONS.

The Commission should use MCI's Petition as a vehicle for investigating recent efforts by ILEC to abuse their position with respect to B&C functions. As described above, the ILECs have recently begun to employ strong-arm, bad faith negotiating tactics that allow them to impose onerous terms and conditions in B&C contracts that clearinghouses and IXCs have little power to resist. As ILECs prepare to enter the long distance market, the incentives to discriminate against their potential IXC competitors through the imposition of burdensome B&C terms and conditions will only become greater. Simultaneously, as competition continues to develop in the local exchange market, the

ILECs' stranglehold on B&C functions will only grow stronger, as more and more non-subscribed calls become uncollectible by IXCs because only the ILEC can trace the path of such calls. Thus, the Commission must act now to prevent ILECs from leveraging their control of B&C functions to harm IXC competitors and the clearinghouses that serve them.

As an initial step, the Commission should follow MCI's suggestion that it "craft an appropriate nondiscrimination rule that can be equally applied to ILEC and CLEC provision of billing and collection services offered to providers of interexchange services."[9] The Commission should not stop, however, at applying this new nondiscrimination principle to B&C functions for non-subscribed services, as MCI proposes. Such a rule ignores the impact that ILEC power can be exercised in providing B&C services for presubscribed calls as well. As discussed above, ILECs occupy a key position with respect to B&C functions for presubscribed services: many IXCs cannot feasibly afford to develop their own systems to bill and collect for such services, and only ILECs have the ability to prepare and deliver a single bill for local and long distance calls as preferred by the overwhelming majority of IXC customers. In order to address the broad power that ILECs hold over B&C services for both non-subscribed and presubscribed calls, the Commission should fashion its rule in a manner that mandates nondiscriminatory access to billing functions for both kinds of calls. Only by promulgating such a comprehensive rule can the Commission ensure that ILECs do not police and control the B&C services provided for clearinghouses and IXCs in an arbitrary or anticompetitive manner.

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[9] Petition, at ii.

While a nondiscrimination rule will deter ILECs from exercising improper control over B&C functions, it will not provide an absolute solution to the ILECs's bottleneck control of BNA and other essential B&C information. As long as the ILECs have exclusive control of such information, they will continue to have the incentive and the ability to make access to that information available on burdensome terms and conditions whenever possible. Equal access to BNA and other information relating to B&C functions is essential if clearinghouses and IXCs are to bill and collect for non-subscribed calls in an effective manner.

The Commission should therefore eliminate the ILECs' bottleneck control of this information by promoting the development of an independent informational database. HBS argues that the Commission has the jurisdiction to take such action under a variety of statutory provisions, including Section 256 of the 1996 Act, which directs the Commission:

> to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks . . . through coordinated public telecommunications network planning and design . . .; . . . and to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.[10]

The Commission should utilize existing industry workshops, such as the Ordering and Billing Forum, to define the parameters of this database. For example, these workshops could address matters such as the content of the database, the geographical scope of the database (*e.g.*, regional or

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[10] 47 U.S.C. § 256(a)(1) and (2) (1996). Moreover, this Commission has previously cited a number of additional statutory sources from the Communications Act of 1934, including Sections 1, 4(i), 201(a), and 214, in asserting authority to compel joint planning and coordination by entities under its jurisdiction. *See MTS and WATS Market Structure,* CC Docket No. 78-72, Phase III, Notice of Proposed Rulemaking, 94 F.C.C. 2d 292, 316, at ¶51 (1983).

by exchange), and cost recovery for the creation and maintenance of the database. An independent B&C database to which all carriers and clearinghouses can obtain access for BNA and other essential billing information will eliminate bottleneck control over this information, and remove much of the bargaining power that the ILECs are improperly using to leverage their entry into the long distance market.

IV. CONCLUSION

The recent trend by ILECs to employ bad faith negotiating tactics and abuse their control of B&C functions warrants investigation by this Commission. Because they have exclusive possession of essential billing information and can provide a single bill to end users, ILECs have the ability to propose onerous terms and conditions and adopt a "take it or leave it" negotiating stance. Clearinghouses and IXCs rely upon the ILEC for BNA information and consolidated billing, and have little choice but to accept whatever terms the ILEC makes available. ILECs can use this leverage to benefit their interLATA operations or the operations of their interLATA affiliates by increasing the operating costs of competitors, many of whom operate on a slim margin that does not allow them to absorb these additional costs. Abuse of this imbalance of access by ILECs requires Commission attention and the promulgation of a rule that will deter ILECs from utilizing unequal access to B&C functions to impose burdensome terms and favor their own interLATA operations or those of their affiliates. The Commission should also promote the establishment of an independent B&C informational database, accessible by all parties on a nondiscriminatory basis.

Respectfully submitted,

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Counsel for Hold Billing Services, Ltd.

Dated: July 25, 1997

ATTACHMENT A

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

In re: Regulations to protect telephone consumers from the switching of their long distance carrier without proper authorization. This practice is known as Slamming.

(Decided at the April 16, 1997 Open Session)

At the November 13, 1996 Open Session, the Commission voted to accept the staff recommendation to establish a generic docket to consider Regulations for Interexchange Carriers. A draft of such Proposed Regulations was served to the Commission and IXCs and Resellers currently registered with the Commission for comment in Docket No. U-22219. Notice was published in the Commission Official Bulletin on December 13, 1996. On December 2, 1996, the First Draft of the Proposed Regulations was mailed to all registered IXCs and Resellers in the State of Louisiana. All parties were given 45 days from that mailing date to comment, and 30 days from the expiration of that 45 day period to file reply comments. The comment deadlines were extended in response to requests made by various interexchange carriers until February 24, 1997. The deadline for reply comments was extended to 30 days from February 24, 1997. Comments and Reply comments were received from parties wishing to do so. Such comments were reviewed. A staff meeting was held on March 25, 1997 to review comments and revise the First draft of the Proposed Regulations. All district offices were contacted for suggestions prior to and after the staff meeting. All district offices were sent a revised copy of the Proposed Regulation for Slamming the week following the meeting. All district offices were contacted for comment on such revisions. On April 9, 1997, the Final Proposed Regulations governing Slamming were sent to all parties who submitted comments or reply comments in Docket U-22219 and to all ILECs and CLECs in Louisiana.

At the Commission's April 16, 1997 Open Session after Staff presentation and discussion, on motion of Commissioner Owen, seconded by Commissioner Sittig and unanimously adopted, the Commission voted to adopt the Final Proposed Regulations for Slamming.

IT IS THEREFORE ORDERED THAT:

1. The Commission's General Order dated July 8, 1993 is hereby preempted and superseded by the Slamming Regulations adopted April 16, 1997.

2. All provisions of the Slamming Regulations for long distance carriers are hereby ordered by the Commission.

3. All entities subject to the provisions of this order shall forthwith take all actions required by this order.

4. The Regulations are set forth in Appendix "A" attached hereto.

5. This order shall be effective immediately.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
May 7, 1997

/s/ DON OWEN
DON OWEN, CHAIRMAN
DISTRICT V

/s/ IRMA MUSE DIXON
IRMA MUSE DIXON, VICE-CHAIRMAN
DISTRICT III

/s/ C. DALE SITTIG
C. DALE SITTIG, COMMISSIONER
DISTRICT IV

/s/ JAMES M. FIELD
JAMES M. FIELD, COMMISSIONER
DISTRICT II

/s/ JACK "JAY" A. BLOSSMAN, JR.
JACK "JAY" A. BLOSSMAN, JR., COMMISSIONER
DISTRICT I

SECRETARY

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

In re: Regulations to protect telephone consumers from the switching of their long distance carrier without proper authorization. This practice is known as Slamming.

(Decided at the April 16, 1997 Open Session)

APPENDIX "A"

RULES FOR CHANGING
TELECOMMUNICATION CUSTOMER'S PREFERRED
LONG DISTANCE CARRIER

RULES FOR CHANGING TELECOMMUNICATION CUSTOMERS' PREFERRED LONG DISTANCE CARRIER

These rules are to protect telephone customers from the switching of their long distance carrier without proper authorization, this practice is known as "Slamming."

(1) No Telecommunication Service Provider shall provide for, bill for, nor solicit for any service that could involve intrastate services within Louisiana without a Certificate of Authority from the Louisiana Public Service Commission. If the Telecommunication Service Provider provides, bills, or solicits for, interstate services only, then all intrastate services must be blocked. Louisiana intrastate services currently include calls which originate and terminate within Louisiana (Intrastate calls). Telecommunication Service Providers unable to block intrastate services must obtain a Certificate of Authority to Operate from the Louisiana Public Service Commission.

(2) All TSP's operating under a Certificate of Authority, are prohibited from providing telecommunications services, including interconnection services, to or on behalf of an uncertificated TSP that is required to be certificated and which is providing telecommunications services in Louisiana, unless the non-certificated TSP is exempt from the Commission's certification requirements pursuant to state or federal law or explicit Commission order.

(3) Verification of Orders for Long Distance Service Generated by Telemarketing. No Telecommunication Service Provider shall submit to a customer's local exchange carrier (LEC) a change in primary interexchange carrier (PIC) generated by telemarketing unless and until the order has been confirmed in accordance with one of the following procedures:

(a) The telecommunications company has obtained the customer's written authorization in a form that meets the requirements of Section 4 (Letter of Agency Form and Content); or,

(b) The Telecommunication Service Provider has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information in paragraph (a) above of this section to confirm the authorization. Telecommunications service provider electing to confirm

sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, identifying information, e.g., date of birth, social security number or PIN number including automatically recording the originating ANI; or

(c) The call is initiated by the TSP or independent third party in response to a prior solicitation made to the subscriber and is received by an appropriately qualified and independent third party separate from the telemarketing representative working on behalf of the long distance company and has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data, e.g., the customer's date of birth and social security number; or,

(d) Within three business days of the customer's request for a PIC change, the soliciting Telecommunication Service Provider must send each new customer an information package by first class mail containing at least the following information concerning the requested change:

(1) The information is being sent to confirm a telemarketing order placed by the customer within the previous week.
(2) The name of the customer's current TSP.
(3) The name of the newly requested TSP.
(4) The type of service being changed (long distance)
(5) A description of any terms, conditions, or charges that will be incurred.
(6) The name of the person ordering the change.
(7) The name, address, and telephone number of both the customer and the soliciting TSP.
(8) A paid postcard which the customer can use to confirm the service order.
(9) A clear statement that the customer must return the postcard within 14 days after the date the information package was mailed to (name of soliciting carrier) before the customer's long distance service will be switched.
(10) The name, address and telephone number of a contact point at the Louisiana Public Service Commission for consumer complaints; and

(e) All LOAs, recordings or other evidence of change orders shall be maintained by the soliciting Telecommunication Service Provider for at least one year from the date the customer's service was switched. Failure to maintain such records shall constitute prima facie evidence that consent from the customer was not obtained.

(f) Mandatory disclosures. Telecommunications Service Provider's utilizing

telemarketing, solicitations and/or confirmation cards to change a customer's long distance service must include the following disclosures:

(1) Identification of the TSP soliciting the change;
(2) The purpose of the call or confirmation card is to solicit a change of the customer's long distance service;
(3) The customer's long distance service may not be changed unless and until the requested change is confirmed in accordance with these rules;
(4) A description of any charge for processing the long distance service change that may be imposed upon the customer by any party.

(4) LETTER OF AGENCY FORM AND CONTENT

(a) A Telecommunication Service Provider may obtain any necessary authorization from a subscriber for PIC change by using a letter of agency as specified in this section. A letter of agency that does not conform with this section is invalid.

(b) The letter of agency shall be a separate document, "an easily separable document," containing only the authorizing language as described below whose sole purpose is to authorize a Telecommunication Service Provider to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the telecommunications company change.

(c) Notwithstanding paragraph (b) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in paragraph (d) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type at least as large and as dark as any other on the front of the check, a notice that the consumer is authorizing a Telecommunication Service Provider change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

(d) At a minimum, the letter of agency must be printed in a type of a size and readability equal to at least 12 point New Roman font and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the TSP change order.

(2) The decision to change the TSP from the current TSP to the prospective TSP.

(3) That the subscriber designates the TSP to act as the subscriber's agent for the TSP change.

(4) Where technically feasible as required by the Commission's General Order dated April 25, 1996, that the subscriber understands that more than one TSP may be designated as the subscriber's intrastate toll telecommunications company for any one telephone number. The letter of agency must contain a separate statement that allows the selection of additional primary interexchange carriers. Where technically feasible as required by the Commission's General Order dated April 25, 1996, one TSP can be a subscriber's interLATA primary interexchange carrier, and another TSP can be a subscriber's intraLATA primary interexchange carrier. Any carrier designated as a TSP must be the carrier directly setting the rates for the subscriber.

(5) The subscriber understands that any TSP selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's TSP and could involve a charge for changing back to the original TSP.

(e) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current Telecommunications Services Provider.

(f) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language.

(g) The LOA must not be associated with or attached to any type of display (content/box method) promoting anything other than long distance service.

(5) Customers' requests for other services, such as but not limited to, travel and calling card services, does not constitute an authorization to change their long distance service provider.

(6) If a customer suspects an unauthorized change of long distance service occurred, then the customer's existing preferred long distance carrier should investigate this complaint along with the soliciting long distance carrier in order to determine if the change was authorized in accordance with the above procedures. If the existing preferred long distance carrier and soliciting long distance carrier have exhausted all means of making a determination of the authorization then they may employ the assistance of the Commission Staff. If the soliciting carrier subscribes to an expedited PIC switchback type service, no investigation will be conducted by the LEC, unless the end user customer